IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8420 OF 2004

Baban Dada Kadam ..Petitioner.

Versus

Sandip Uddhav Ghadage & Ors. ..Respondents.

Shri Ajit Kenjale for the Petitioner.

Shri Dilip Bodke for Respondent Nos.1 & 2.

CORAM : S. A. BOBDE, J.

DATED : 07TH JULY, 2005.

P.C.:

1. Rule. Rule made returnable forthwith. Heard by consent.

2. The Petitioner has challenged the order of the 4th Additional District Judge, Satara, refusing an interim injunction restraining the purchasers of what is alleged to be a joint family property from disturbing their possession. The property is said to have been sold by the Petitioner’s co-parceners i.e.

Respondents 3 and 4 in favour of Respondents 1 and 2, without there being any legal necessity and without there being any partition. These are the matters which are according to me, may be determined in the suit. Prima facie, the courts below have found and in my view, rightly that the Petitioner is not entitled to any relief in view of the fact that though he is younger brother, by styling himself as a Karta of the family, he has alienated a part of the joint family property in favour of the stranger. This very property was repurchased by the plaintiff's wife Kamaladevi, ostensibly from her own funds. The plaintiff is now claiming it as a separate and self acquired property of Kamaladevi. In fact, it appears that the Petitioner has entered into several transactions to sell the ancestral lands. This is sought to be justified by the learned counsel for the Petitioner on the ground that the sale was made on account of illness of Shankar who is the brother of the Petitioner and father of the Respondent No.4. However, the Appellate Court has observed that there is no evidence on record about Shankar's illness.

3. Mr. Bodke, the learned counsel for the Respondents contends that an undivided share in

property can be sold. The purchaser then gets a right to demand partition. This submission is correct in law. It appears from the order of the Trial Court, which is confirmed by the Appellate Court that the 7/12 extracts of the suit land clearly indicates that the names of the purchaser i.e. the Respondent Nos. 1 and 2 alongwith the owner, the Respondent Nos. 3 and 4 appear as being in possession of certain area out of the suit land. The purchasers have thus been found to have been already put in possession of the suit land. In these circumstances, it cannot be said that the Respondents Nos. 1 and 2 are trying to forcibly enter the suit land. Therefore, injunction has been rightly refused. In case there is some area of which Respondents 1 and 2 are not in possession, other than the suit land, and which they claim to have purchased from the Respondent Nos. 3 and 4, they shall not attempt to take any forcible possession without following the due procedure established by law.

4. In the circumstances, I find no reason to interfere with the impugned order. The Rule is hereby discharged.

07.07.2005 (S.A.BOBDE,J.)

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